APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,477	02/06/2004	Yoshio Sasaki	09812.0399-00000	7046

22852   7590   01/25/2008
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER
SAUNDERS JR, JOSEPH

ART UNIT	PAPER NUMBER
2615	

MAIL DATE	DELIVERY MODE
01/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/773,477	SASAKI, YOSHIO
	Examiner	**Art Unit**	
	Joseph Saunders	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>15 October 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-16</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-16</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>06 February 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>7-12-07</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1.   This office action is in response to the communication filed October 15, 2007.

Claims 1 – 16 are currently pending and considered below.

Claim Objections

2.   Claims 1, 4, 10, 11, 14, and 15 are objected to because of the following

informalities: Claims 1, 10, and 14 use the term "musical file group" when referring back

to the "music file group" therefore the occurrences of "musical file group" in claims 1, 10,

and 14 should be corrected for consistency. Claims 4, 11, and 15 state "an selected

area" and should be corrected to "a selected area". Appropriate correction is required.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.   Claims 1 – 16 are rejected under 35 U.S.C. 102(e) as being anticipated by

Mercer et al. (US 7,043,477 B2), hereinafter <u>Mercer</u>.

Claim 1: <u>Mercer</u> discloses an audio playback apparatus comprising: a sound source storing music files (computer readable medium 110) in a hierarchical manner (hierarchical data structure); playback unit specification means (consumer electronic device 112 including input module 114, interface module 116, and selection module 118) for specifying a unit (group) for use in selecting music file groups, wherein each music file group comprises at least one music file (group of audio files); music file group selection means for randomly selecting a music file group; and playback means for reproducing the music files included in the selected music file group before reproducing music files that are not in the selected musical file group ("The user also can manipulate the created playlists by shuffling or repeating the playlists. Such shuffle or random play options may operate at the group level or at the individual media file level, which allows, for example, playback of all songs by a random artist before proceeding to the next random artist.") (Column 4 Line 29 – Column 6 Line 59).

Claim 2: <u>Mercer</u> discloses the audio playback apparatus according to claim 1, wherein said sound source records a folder (directory or playlist), an album (groups e.g., album, artist, genre) formed in said folder, and a music file (group of audio files) formed in said album in a hierarchical manner (hierarchical data structure) and said playback unit specification means specifies any one of said music file, said album, and said folder as the unit of said music file group (Column 4 Line 29 – Column 6 Line 59 and Column 9 Lines 9 – 63).

Claim 3: Mercer discloses the audio playback apparatus according to claim 2, further comprising: album (groups e.g., album, artist, genre) selection means for randomly selecting said album from said selected music file group, if said folder (directory or playlist) is specified by said playback unit specification means; wherein said playback means reproduces music files for each selected album ("The user also can manipulate the created playlists by shuffling or repeating the playlists. Such shuffle or random play options may operate at the group level or at the individual media file level, which allows, for example, playback of all songs by a random artist before proceeding to the next random artist.") (Column 4 Line 29 – Column 6 Line 59 and Column 9 Lines 9 – 63).

Claim 4: Mercer discloses the audio playback apparatus according to claim 1, further comprising: selected area specification means for specifying an selected area of said music file group (Column 4 Line 29 – Column 6 Line 59).

Claim 5: Mercer discloses the audio playback apparatus according to claim 4, wherein said sound source records a folder (directory or playlist), an album (groups e.g., album, artist, genre) formed in said folder, and a music file (group of audio files) formed in said album in a hierarchical manner (hierarchical data structure) and said selected area specification means is capable of specifying any one of said album, said folder, and all areas of said sound source (Column 4 Line 29 – Column 6 Line 59 and Column 9 Lines 9 – 63).

Claim 6: <u>Mercer</u> discloses the audio playback apparatus according to claim 1, wherein said playback means sequentially reproduces music files included in said selected music file group in the order of their recording (Column 21 Lines 28 – 38).

Claim 7: <u>Mercer</u> discloses the audio playback apparatus according to claim 1, wherein said playback means randomly reproduces music files included in said selected music file group ("The user also can manipulate the created playlists by shuffling or repeating the playlists. Such shuffle or random play options may operate at the group level or at the individual media file level, which allows, for example, playback of all songs by a random artist before proceeding to the next random artist.") (Column 4 Line 29 – Column 6 Line 59).

Claim 8: <u>Mercer</u> discloses an audio playback apparatus comprising: a sound source storing music files (computer readable medium 110) arranged in albums (groups e.g., album, artist, genre), an album being a unit (group) of a set of music files (group of audio files); album selection means for randomly selecting an album to be reproduced from the sound source; and playback means for reproducing the music files in the selected album before reproducing music files that are not in the selected album ("The user also can manipulate the created playlists by shuffling or repeating the playlists. Such shuffle or random play options may operate at the group level or at the individual media file level, which allows, for example, playback of all songs by a random artist before proceeding to the next random artist.") (Column 4 Line 29 – Column 6 Line 59).

Claim 9: <u>Mercer</u> discloses an audio playback apparatus comprising: a sound source

storing music files (computer readable medium 110) arranged in folders (directories or

playlists), each folder (directory or playlist) storing an album (groups e.g., album, artist,

genre) being a unit (group) of a set of music files (group of music files); folder selection

means for randomly selecting a folder to be reproduced from the sound source; and

playback means for reproducing the music files in the selected folder before

reproducing music files that are not in the selected folder ("The user also can

manipulate the created playlists by shuffling or repeating the playlists. Such shuffle or

random play options may operate at the group level or at the individual media file level,

which allows, for example, playback of all songs by a random artist before proceeding to

the next random artist.") (Column 4 Line 29 – Column 6 Line 59 and Column 9 Lines 9 –

63).

Claim 10: <u>Mercer</u> discloses an audio playback method comprising the steps of:

specifying, in a sound source storing music files (computer readable medium 110) in a

hierarchical manner (hierarchical data structure), a unit (group) for use in selecting a

music file group, wherein each musical file group comprises at least one music file

(group of audio files); randomly selecting a music file group; and reproducing the music

files included in the selected music file group before reproducing music files that are not

in the selected musical file group ("The user also can manipulate the created playlists

by shuffling or repeating the playlists. Such shuffle or random play options may operate

at the group level or at the individual media file level, which allows, for example,

playback of all songs by a random artist before proceeding to the next random artist.")

(Column 4 Line 29 – Column 6 Line 59).

Claim 11: <u>Mercer</u> discloses the audio playback method according to claim 10, further

comprising the step of: specifying an selected area of said music file group (Column 4

Line 29 – Column 6 Line 59).

Claim 12: <u>Mercer</u> discloses the audio playback method according to claim 10, wherein

said playback step randomly reproduces said music files included in said selected

music file group ("The user also can manipulate the created playlists by shuffling or

repeating the playlists. Such shuffle or random play options may operate at the group

level or at the individual media file level, which allows, for example, playback of all

songs by a random artist before proceeding to the next random artist.") (Column 4 Line

29 – Column 6 Line 59).

Claim 13: <u>Mercer</u> discloses the audio playback method according to claim 10, further

comprising the step of: randomly selecting an album (groups e.g., album, artist, genre)

from said selected music file group if, from said sound source recording a folder

(directory or playlist), an album formed in said folder, and a music file formed in said

album in a hierarchical manner, said folder is specified in said playback unit

specification step; wherein said playback step reproduces music files for each selected

album ("The user also can manipulate the created playlists by shuffling or repeating the

playlists. Such shuffle or random play options may operate at the group level or at the

individual media file level, which allows, for example, playback of all songs by a random

artist before proceeding to the next random artist.") (Column 4 Line 29 – Column 6 Line

59 and Column 9 Lines 9 – 63).

Claim 14: Mercer discloses a computer readable media storing a computer program

that causes a processor to perform a method , the method comprising: specifying, in a

sound source storing music files (computer readable medium 110) in a hierarchical

manner (hierarchical data structure), a unit (group) for use in selecting a music file

group, wherein each musical file group comprises at least one music file (group of audio

files); randomly selecting a music file group; and reproducing the music files included in

the selected music file group before reproducing music files that are not in the selected

musical file group ("The user also can manipulate the created playlists by shuffling or

repeating the playlists. Such shuffle or random play options may operate at the group

level or at the individual media file level, which allows, for example, playback of all

songs by a random artist before proceeding to the next random artist.") (Column 4 Line

29 – Column 6 Line 59).

Claim 15: Mercer discloses the media according to claim 14, wherein the method

further comprises: specifying an selected area of said music file group (Column 4 Line

29 – Column 6 Line 59).

Claim 16: <u>Mercer</u> discloses the media according to claim 14, wherein the method further comprises: randomly selecting said album from said music file group (groups e.g., album, artist, genre) selected by said music file group selection function if, from said sound source recording a folder (directory or playlist), an album formed in said folder, and a music file formed in said album in a hierarchical manner, said folder is specified by said playback unit specification function; wherein said playback function reproduces music files for each selected album ("The user also can manipulate the created playlists by shuffling or repeating the playlists. Such shuffle or random play options may operate at the group level or at the individual media file level, which allows, for example, playback of all songs by a random artist before proceeding to the next random artist.") (Column 4 Line 29 – Column 6 Line 59 and Column 9 Lines 9 – 63).

Response to Arguments

5.   Applicant's arguments with respect to claims 1 – 16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Joseph Saunders whose telephone number is (571)

270-1063. The examiner can normally be reached on Monday - Thursday, 9:00 a.m. -

4:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Sinh Tran can be reached on (571) 272-7564. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JS
January 14, 2008

SINH TRAN
SUPERVISORY PATENT EXAMINER